

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JANE DOE #1,	:	Civil No. 1:20-CV-02339
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CHAD WOLFE, <i>et al.</i> ,	:	
	:	
Defendants	:	Judge Jennifer P. Wilson

**ORDER**

**AND NOW**, on this 13th day of September, 2021, for the reasons stated in the accompanying memorandum, **IT IS ORDERED AS FOLLOWS**:

- 1) Defendants' motion to dismiss, Doc. 8, is **GRANTED IN PART AND DENIED IN PART**. Specifically, Count I is **DISMISSED WITH PREJUDICE** for lack of subject matter jurisdiction as it relates to any claims regarding the USCIS's duty to issue employment authorization prior to final adjudication of U Visa petitions. The motion is **DENIED** regarding Count I to the extent that it seeks dismissal of Plaintiff's claim that the pace by which the USCIS is adjudicating U Visa petitions is unreasonably prolonged under the APA. Counts II and III are **DISMISSED WITH PREJUDICE** for lack of subject matter jurisdiction.
- 2) As discussed during the case management conference, the court issues the following briefing schedule to determine the scope of fact discovery in this matter and whether the court should apply the TRAC factor test or the Third Circuit's OCAWU test to resolve the surviving APA claim:
  - a) On or before **September 27, 2021**, Defendants shall file a brief addressing the issues identified above;
  - b) Plaintiff shall file a response to Defendants' brief **within seven days after service of Defendants' brief**; and

- c) Defendants shall file a reply to Plaintiff's response **within seven days after service of Plaintiff's response.**

s/Jennifer P. Wilson  
JENNIFER P. WILSON  
United States District Court Judge  
Middle District of Pennsylvania